

Message

From: Chin, Lucita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA404E3F56574242AEE0811A07E309FC-CHIN, LUCITA]
Sent: 3/2/2020 8:06:10 PM
To: Sierra-Lopez, Omar [Sierra-Lopez.Omar@epa.gov]
CC: Robinson, Valois [Robinson.Valois@epa.gov]
Subject: ESA comments
Attachments: Shortened DB Comment Table Jan 2020 Highlighted LC.docx

Here is the table of comments. The legal context column should identify the ESA comments. This table does not include the PT comments, which I've cut and pasted below. Valois, are there additional ESA comments from the tribe that weren't included in Cadmus's table?

- a. Powertech requests clarification on the basis of a 1-mile avoidance buffer for the whooping crane, rufa red-knot and northern long-eared bat and how this was determined to be protective. Such a buffer appears to be much greater than typical wildlife buffers and was formulated without basis within the documents provided. From the documents provided, it appears that the buffer was arbitrarily increased from 1/4 mi to 1 mile by EPA and applied to other species arbitrarily. Powertech recommends that a mitigation plan be allowed to be developed upon observation of these species. Such a plan could involve various strategies to avoid a take. PT Class III 104 and Class V 62
- b. Powertech requests modification of the requirement that all operations and construction must cease within 1 mile upon sighting a whooping crane, rufa red-knot or northern long-eared bat. In particular, active operations cannot be immediately ceased as this could endanger protection of USDWs as operations are required to be manned. As well, this could create serious issues with compliance conditions within the Class III permit, for example, the need to continuously maintain a bleed on the wellfield. Powertech recommends that a mitigation plan be allowed to be developed upon observation of these species. Powertech questions the authority of the EPA to enforce such requirements. Such conditions are enforceable under the South Dakota DENR Large Scale Mine Permit, and Powertech believes these requirements are better applied in this fashion, with direct interaction with SD GFP, where trained wildlife biologists can determine an appropriate approach. PT Class III 105 and Class V 63
- c. Class V IX.B.5 - If supplemental lighting is used during construction or operation, the lights must be directed and/or sheltered to minimize the amount of light escaping the work or project site. This condition appears arbitrary and not tied to the known presence of wildlife of concern. Powertech suggests that this condition be modified so that if a whooping crane, rufa red-knot or northern long-eared bat have been confirmed at the site by trained wildlife biologist, then such a condition would be applied if deemed appropriate by a trained wildlife biologist. PT Class V 64
- d. From the biological assessment documents provided, it does not appear that the EPA sought specific input on the parameters of mitigation for the whooping crane and rufa red-knot prior to creating permit requirements. Powertech requests clarification on the Section 7 consultation with the Secretary of the Interior (U.S. Fish and Wildlife Service). Are the mitigation measures described in the draft permit a result of this consultation? If not, Powertech requests that this section be revised once consultation has been completed. PT 106
- e. Powertech requests clarification on the frequency of the motion-activated camera monitoring. Powertech requests clarification that additional monitoring will not be required if the shaft entrance is covered following a determination that no bats are inside the shaft. PT 107

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